

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

IVOR B. KAPLAN, M.D.,

Plaintiff,

v.

Civil Action No. 2:23cv598

AESTHETIC PHYSICIANS, INC. a/k/a
AESTHETIC PHYSICIANS, P.C. d/b/a SONO BELLO

Serve:

Business Filings, Inc.
4701 Cox Rd., Suite 285
Glen Allen, VA 23060-6808

BODY CONTOUR CENTERS, LLC, d/b/a SONO BELLO

Serve:

Corporation Service Company
100 Shockoe Slip, FL 2
Richmond, VA 23219-4100

Defendants.

COMPLAINT

Plaintiff Ivor B. Kaplan, M.D. (“Kaplan” or “Dr. Kaplan”), by and through counsel, files this Complaint against Aesthetic Physicians P.C. and Body Contour Centers, LLC (collectively d/b/a and referred to as “Sono Bello”) and in support thereof state as follows:

CAUSE OF ACTION

1. This is a cause of action for violations of the United States federal Defend Trade Secrets Act, 18 U.S.C. § 1836 *et seq.*, the Virginia Uniform Trade Secrets Act, Va. Code. Ann. § 59.1-336 *et seq.*, and conspiracy under Va. Code Ann. § 18.2-499 *et seq.*

PARTIES, JURISDICTION AND VENUE

1. Dr. Kaplan is an individual residing in Norfolk, Virginia.

2. Aesthetic Physicians, Inc. a/k/a Aesthetic Physicians, P.C. (“Aesthetic Physicians”) is an Arizona stock corporation that is authorized to transact business in Virginia, and has a principal office address of 8525 E. Pinnacle Peak Road, Suite 150, Scottsdale, AZ, 85255-3583. Aesthetic Physicians operates under the fictitious name Sono Bello Body Contour Center located at 6160 Kempsville Cir., #100a, Norfolk, Va. 23502.

3. Defendant Body Contour Centers, LLC (“BCC”) is a Delaware Limited Liability Company authorized to transact business in Virginia and with a principal office address of 5250 Carillon Point, Kirkland, WA 98033-0000.

4. This Court has subject matter jurisdiction pursuant to 28 USC 28 U.S.C. § 1331 as the claims herein arise in part for violations under The Defend Trade Secrets Act, 18 U.S.C. § 1836 and acts complained of herein occurred after May 11, 2016; the Court has supplemental jurisdiction over the state law claims under 28 USC § 1367.

5. This Court has personal jurisdiction over the defendants as the defendants (identified herein collectively as “Sono Bello”) regularly conduct business within the Commonwealth of Virginia, including having collectively entered into a Sono Bello Physician Employment Agreement (the “Employment Agreement”) with Dr. Kaplan for services provided at the Sono Bello Body Contour Center located at 6160 Kempsville Cir., #100a, Norfolk, Va. 23502 (“Norfolk Sono Bello”).

6. Venue is proper in this Court pursuant to 28 USC § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims herein occurred in this District and Division.

FACTS

I. SONO BELLO, AESTHETIC PHYSICIANS, AND BODY CONTOURS, LLC

7. Sono Bello is in the business of providing locations for cosmetic surgical remedies, exclusively for out-patient procedures. Sono Bello offers a range of services, including but not limited to laser fat removal, excess skin removal, cellulite reduction, male chest reduction, “mommy makeover”, “tummy tuck alternative”, arm fat removal, chin fat removal, back fat removal, leg fat removal, and stomach fat removal.

8. Sono Bello advertises and operates locations throughout the United States in Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Sono Bello advertises for and operates out of, according to its own website (www.sonobello.com/locations) over 80 locations throughout the United States.

9. BCC holds rights in the trade name “Sono Bello” and licenses the name and brand to other companies which do business as Sono Bello.

10. BCC has a Management and Services Agreement (“MSA”) with defendant Aesthetic Physicians wherein BCC provides all management and support services in the locations around the United States that BCC leases and manages, and Aesthetic Physicians is licensed under the MSA to use Sono Bello as its practice name.

11. Under the MSA, while Aesthetic Physicians provides all professional (medical) services as Sono Bello, BCC provides all nonprofessional services including management,

administration, facilities, support services, and marketing. Sono Bello physicians and nurses are employed by Aesthetic Physicians.

12. Sono Bello therefore operates around a structure where BCC opens and operates a facility while Aesthetic Physicians runs the medical practice contained therein, in many cases with a separate corporate structure set up for each of the facilities' medical practice but with all of the medical staff including surgeons contracted directly with Aesthetic Physicians. In this structure, however, BCC provides all of the control over marketing, public dissemination of information including about the services rendered by any Sono Bello location

13. Aesthetic Physicians is responsible for training of the medical staff on both the procedures available and any updates or modifications to those procedures.

14. As part of this corporate structure, BCC owns all rights in any intellectual property related to the Sono Bello operations, including the rights to the name "Sono Bello" as well as owning and operating all digital media related to Sono Bello.

15. Sono Bello operates two website domains: aestheticphysicianspc.com and sonobello.com, which provide information to the public throughout the United States regarding the services provided, locations, and surgeons, as well as offering education in surgical procedures and marketing to potential new surgeons to be employed by Sono Bello. The website sonobello.com is principally towards potential customers, while aestheticphysicianspc.com is principally directed to members of the medical community for training and potential employment by Sono Bello.

16. The relationship between BCC and Aesthetic Physicians is governed by the MSA and BCC and Aesthetic Physicians are separate, independent corporate entities.

II. DR. KAPLAN AND SONO BELLO

17. Dr. Ivor B. Kaplan, M.D., is a board certified plastic and reconstructive surgeon with over 40 years of experience and is also board certified in general surgery and hand surgery. He is a professional member of the American Society of Plastic Surgeons as well as the American Society of Aesthetic Plastic Surgeons.

18. In early 2020, Dr. Kaplan began working at the Norfolk Sono Bello, performing various surgical procedures, but was furloughed shortly thereafter due to a shutdown of the procedures at Norfolk Sono Bello related to the outbreak of COVID-19. During this short period of time Dr. Kaplan had not entered into a written agreement with Sono Bello.

19. Several months later, the medical practice at Norfolk Sono Bello resumed and Dr. Kaplan restarted providing surgical services there. Dr. Kaplan and Aesthetic Physicians entered into the Sono Bello Physician Employment Agreement (the “Agreement”) on April 30, 2020 (Exhibit 1).

20. Dr Kaplan was performing procedures outlined by SonoBello in its listed and approved “menu” of procedures, namely, laser-liposuction (TriSculpt) as well as lower abdominal limited skin removal (Trisculpt EX). The latter procedure (TriSculpt EX) being an ‘add on’ procedure once the laser liposuction had been completed, in order to remove redundant loose stretched out skin from weight gain. Patients seen in consultation for surgery and deemed to have way too much loose skin to be removed by the Trisculpt EX procedure were told to seek outside consultation with a Plastic Surgeon in order to undergo an abdominoplasty procedure under general anesthesia (as abdominoplasty and general anesthesia was not offered as a procedure at SonoBello).

21. As part of his work requirement, Dr Kaplan was requested to see patients that had been operated on by other surgeons at SonoBello and who were unhappy with the outcome of their Trisculpt EX procedure. These patients complained that they had been told they would have a “flat tight “ abdomen after their procedure but still had loose hanging skin both above and below the umbilicus that further liposuction (offered by SonoBello as a so called “Satisfaction” procedure) would not correct, and possibly would make the laxity of the skin, even worse. Dr. Kaplan conceived of and developed an improved procedure whereby liposuction as then-performed by Sono Bello surgeons was coupled with additional surgical interventions to correct for skin expansion/stretching due to weight gain in a single procedure and performed under local anesthetic rather than general anesthetic (together the “Procedure” or “AbEX”).

22. Dr Kaplan recognized the need for an improved procedure to tighten both the lower and upper abdominal skin as well as reposition the umbilicus. He conceived of and developed an improved procedure whereby liposuction as then performed by SonoBello surgeons was coupled with an additional surgical procedure to remove very extensive swaths of redundant skin, tighten both the lower and upper abdominal skin as well as move the umbilicus to a new more cosmetically pleasing position. This would now make it possible to offer patients with very large skin redundancy (who previously would optimally have been referred to an outside Plastic Surgeon for an abdominoplasty procedure under general anesthesia), to undergo a cosmetically pleasing procedure performed within the existing parameters of Local Anesthesia as practiced at SonoBello, rather than General Anesthesia. This combination of liposuction and extensive skin removal and umbilical transposition (together the Procedure) was later trademarked by SonoBello as “AbEX”. (see 27. below) The Procedure was new to both Sono Bello and the plastic surgery field as a

whole, and had not been incorporated into any of the offerings made to the general public, nor taught to or utilized by any surgeons at Sono Bello prior to Dr. Kaplan.

23. Dr. Kaplan began performing the Procedure on patients who were deemed unsatisfied with the outcome of their liposuction procedures at Sono Bello (“Satisfaction Procedures”) and began performing the Procedure as well on patients other than for Satisfaction Procedures.

24. Later in 2020, the Procedure was demonstrated by Dr. Kaplan to Dr. Christopher Chung, MD, the Chief Medical Officer for Aesthetic Physicians and Dr. Robert F. Centeno, MD, who was joining Sono Bello and is currently a Regional Medical Director at Sono Bello.

25. Because the Procedure was new to both the plastic surgery community in general and to Sono Bello, Dr. Chung agreed that the Procedure would be subject to a pilot study at the Norfolk Sono Bello and be performed by Drs. Kaplan and Centeno to 1) determine the safety and feasibility of the Procedure and 2) determine the financial viability for Sono Bello.

26. At no time, however, was Dr. Kaplan under any agreement or requirement for his position to either 1) develop new techniques related to the surgical practice at Sono Bello or 2) to assign any such intellectual property to either Aesthetic Physicians or BCC.

27. By mid-2021, Sono Bello had embraced the Procedure and had begun offering it to the consuming public. In or around October 17, 2021, Sono Bello began advertising the procedure as a “Tummy Tuck Alternative” (See <https://web.archive.org/web/20211017191654/https://www.sonobello.com/procedure/body-procedures/tummy-tuck-alternative/>). Sono Bello had also determined to advertise the Procedure as the “AbEx” and filed for U.S. federal trademark protection of the same on October 8, 2021 as U.S. Trademark App. No. 97/066,576, now U.S. Trademark Reg. No. 7,001,958.

28. The Procedure began to be offered at that same time at Sono Bello locations across the country without the permission of Dr. Kaplan, without remuneration to him for the same, and without Dr. Kaplan having provided Sono Bello any rights in the Procedure.

29. Sono Bello has been and continues to have the Procedure performed in interstate commerce by and through its 80+ locations throughout the United States.

30. Further, Aesthetic Physicians has been teaching the Procedure to surgeons at Sono Bello locations throughout the United States. Aesthetic Physicians has no rights to the Procedure, whether to teach or perform it, and Dr. Kaplan has never given Aesthetic Physicians any rights to do so.

31. Despite demand from Dr. Kaplan, Sono Bello has never provided any remuneration to Dr. Kaplan for the Procedure. In the face of his demands, Sono Bello argued to Dr. Kaplan that he could not be entitled to any rights in the Procedure because according to Sono Bello it had been performed for decades and was well known. This despite Dr. Kaplan receiving a 2022 holiday card from Tom Barr, President and CEO of Sono Bello in which Barr stated “You are the father of our ABEX.”

32. Additionally, despite the assertions by Sono Bello that the Procedure was not new and/or innovative and that Dr. Kaplan could not claim rights in it, Sono Bello has repeatedly represented to the public that the Procedure is “*a unique solution*” (<https://www.sonobello.com/procedure/body-procedures/tummy-tuck-alternative/>) and that “*AbEX is our new, innovative procedure* that removes fat and loose sagging skin from the upper and lower abdominal area in just one visit. *This breakthrough technique was developed by Sono Bello* and is performed by our board-certified surgeons,” (<https://www.sonobello.com/procedures/tummy-tuck-alternative/>). Sono Bello also states

unequivocally that “our board-certified/eligible Sono Bello surgeons, *who pioneered and perfected this technique. . .*” (www.sonobello.com/what-is-liposuction/what-is-abex/); “*AbEX is Sono Bello’s innovative procedure*” (<https://www.youtube.com/watch?v=BeXoCtZJano>); or, in the direct words of Dr. Chung: “*AbEX is a very new innovative procedure that was actually developed by Sono Bello*” (<https://www.youtube.com/watch?v=Rc37FiRoUsI>).

33. By spring of 2023, Sono Bello was actively working to distance itself from Dr. Kaplan in an effort to capitalize on the Procedure without having to compensate him or obtain rights from him for the trade secret that he had developed. Sono Bello fabricated reasons to terminate Dr. Kaplan, and by June of 2023 had forced him into a position where resignation was his only reasonable option. Dr. Kaplan resigned from Sono Bello in that month.

34. In the time since Dr. Kaplan developed the Procedure, Sono Bello has implemented a strategy to steal the rights in the Procedure from Dr. Kaplan, with BCC and Aesthetic Physicians conspiring to deprive him of his rights in the procedure and to unlawfully obtain, control, and monetize the procedure, including conspiring to force Dr. Kaplan to resign without good cause other than Sono Bello’s greed and desire to protect itself from having unlawfully obtained and used for commercial purposes the Procedure.

35. Dr. Kaplan is aware of the advertising and ubiquitousness of the Procedure being advertised and used by Sono Bello, and is aware that the theft of his intellectual property has generated millions of dollars in unlawful gains for Sono Bello.

COUNT I: THEFT OF TRADE SECRET IN VIOLATION OF 18 U.S.C. § 1836

36. The allegations of Paragraphs 1–35 are incorporated as though fully repeated herein.

37. The Procedure as disclosed to Defendants constituted trade secrets developed individually by Dr. Kaplan that has value from not being generally known by others.

38. Sono Bello, by and through its misappropriation and use of Dr. Kaplan's trade secret is in violation of the Federal Defend Trade Secrets Act.

39. Defendants' acts were willful and malicious.

40. Dr. Kaplan has been damaged as a result.

**COUNT II: MISAPPROPRIATION OF TRADE SECRETS IN VIOLATION OF
VA. CODE ANN. § 59.1-336 *et seq.***

41. The allegations of Paragraphs 1-40 are incorporated as though fully repeated herein.

42. The Procedure as disclosed to Defendants constituted trade secrets developed individually by Dr. Kaplan that had value from not being generally known by others.

43. Sono Bello, by and through its misappropriation and use of Dr. Kaplan's trade secret is in violation of the Virginia Uniform Trade Secrets Act.

44. Defendants' actions were made in bad faith and/or were willful and malicious.

45. Dr. Kaplan has been damaged as a result.

COUNT III: CONSPIRACY IN VIOLATION OF VA. CODE ANN. § 18.2-499

46. The allegations of Paragraphs 1-45 are incorporated as though fully repeated herein.

47. Body Contour Centers, LLC and Aesthetic Physicians, Inc. combined together and mutually undertook an agreement and actions to willfully and maliciously injure Dr. Kaplan in his business and trade and, more specifically, to unlawfully acquire trade secret information and related intellectual property belonging to Dr. Kaplan that had independent value from not being generally known by others, to financially and otherwise benefit from the acquisition and

use of that trade secret and intellectual property information, and to deprive Dr. Kaplan of the value of his trade secret and intellectual property rights.

48. Dr. Kaplan has been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

49. Damages as provided for by the Federal Defend Trade Secret Act, the Virginia Uniform Trade Secrets Act, and Conspiracy under Va. Code Ann. § 466 and 500, including compensatory, exemplary and punitive damages;

50. Plaintiff's actual damages;

51. The amount of Defendants' unjust enrichment;

52. All profits attained as a result of the sale of products created using confidential information;

53. Injunctive relief;

54. Pre- and post-judgment interest;

55. Attorneys fees, cost of suit and all other costs and expenses as provided for under the Defend Trade Secrets Act, the Virginia Uniform Trade Secrets Act, and Va. Code Ann. § 466 and 500 ; and

56. Other such relief as the Court may deem proper.

PLAINTIFF DEMANDS TRIAL BY JURY

Dated: November 27, 2023

IVOR B. KAPLAN, MD

By :/s/ Duncan G. Byers

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